

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**November 2, 2021 at 2:00 p.m.**

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<b>1.</b>	<b><u>20-24700-E-13</u></b> <b><u>WDR-3</u></b>	<b>WILLIAM REDDIN</b> <b>Timothy Hamilton</b>	<b>MOTION TO MODIFY PLAN</b> <b>9-17-21 <a href="#">[128]</a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Amend the Second Amended Plan is <span style="color:red">XXXXX</span>.</b>
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The debtor, William Donald Reddin ("Debtor"), seeks confirmation of the Amended Plan. Debtor has not filed an Amended Plan to be confirmed. Rather, Debtor provides a Stipulation agreed upon by the Debtor and certain Creditors. The Stipulation, filed on September 17, 2021, states upon confirmation of the Second Amended Chapter 13 Plan, Dckt. 120, the Debtor will have six months to bring current the payments which are in arrears, in order to give Debtor's business time to recover from the impact of the El Dorado County Caldor fire. Stipulation, Dckt. 130. 11 U.S.C. § 1323 permits a

debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 19, 2021. Dckt. 135. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtor is seeking to modify a plan, which normally requires a motion with the request modification, which normally requires a plan.
- B. The proposed modification potentially may allow Debtor to make no payments for six months, even if he has the income to so.

## **DISCUSSION**

### **Review of Minimum Pleading Requirements for a Motion**

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

### **Grounds Stated in Motion**

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statement made by Movant is:

- A. This motion is based on the Notice of Motion and Stipulation of Debtor and Creditors filed concurrently herewith.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local

Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

- A. The Notice of Motion; and
- B. Stipulation

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The court has not waived that Local Rule for Movant.

### **Order Confirming Second Amended Chapter 13 Plan**

On September 21, 2021, Debtor's Attorney lodged with the court an Order Confirming Second Amended Chapter 13 Plan. Dckt. 132. The Chapter 13 Trustee approved the form of the Order and lodged it with the court to be signed. The court signed the order.

This was done pursuant to the prior order of the court granting the Motion to Confirm the Second Amended Plan. Order, Dckt. 119.

Debtor and the two creditors who have filed claims in this case now seek to "amend" the terms of the confirmed Second Amended Plan. Though not stated in the Motion, it appears that the payment terms are modified to extend the arrearage cure.

At the hearing, **XXXXXXX**

~~\_\_\_\_\_The proposed modification potentially allows Debtor to make no payments for six months even if he has the income to so.~~

~~\_\_\_\_\_The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by William Donald Reddin ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, creditors, and parties requesting special notice on July 30, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Modified Plan is granted.</b></p>
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The debtor, Toby Charles Tolen ("Debtor") seeks confirmation of the Modified Plan to account for the EDD not filing a claim, Debtor's ongoing health issues, and pausing operation of his lumber business since October 2020. Declaration, Dckt. 191. The Modified Plan provides for payments of 1,450.00 for months 29 through 60, and a one (1) percent dividend to unsecured claims totaling \$159,466.82. Modified Plan, Dckt. 190. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 25, 2021. Dckt. 197. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor may not be able to make payments.
- B. The plan proposes to change the interest rate of a secured claim.

## **DISCUSSION**

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Debtor has failed to file supplemental Schedules I and J after testifying in his Declaration that he has paused the operation of his business and is now working as an independent contractor. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Class 2A Interest Rate**

Trustee points out that the Debtor's plan changes creditor Tri Counties Bank's Interest rate from nine (9) percent to five (5) percent rate. A review of the Certificate of Service shows that Debtor served Tri Counties Bank at

Tri Counties Bank  
Tri Counties Bank Legal Department  
Post Office Box 992570  
Redding, CA 96099-2570

Dckt. 192. According to California Secretary of State website, Tri Counties Bank has their Agent of Service identified as:

RICHARD P SMITH  
63 CONSTITUTION DRIVE  
CHICO CA 95973

<https://businesssearch.sos.ca.gov/CBS/Detail>. There being a Due Process issue where Creditor is to receive less than the original interest rate and not receiving service, this modification would violate the Due Process Clause of the United States Constitution.

### **September 14, 2021 Hearing**

The Debtor requested that the hearing be continued to allow for completion of service. The Trustee concurred.

### **September 20, 2021 Certificate of Service**

On September 20, 2021, Movant served the following documents to Tri Counties Bank Agent of Service, located at 63 Constitution Drive, Chico, CA, 95973:

1. Motion to Confirm 1<sup>st</sup> Modified Chapter 13 Plan
2. Notice of Hearing
3. Tolen Declaration
4. 1<sup>st</sup> Modified Chapter 13 Plan

### **September 14, 2021 Supplemental Schedules I and J**

Debtor has now filed Supplemental Schedules I and J. Dckt. 200.

The proposed 1<sup>ST</sup> Modified Chapter 13 Plan complies with 11 U.S.C. § 1322, § 1325, and § 1329; the Motion is granted and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Toby Tolen (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s 1<sup>ST</sup> Modified Chapter 13 Plan filed on July 30, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Amended Plan is ~~XXXXX~~.**

The debtor, Curtis Terence Burks and Carmen Vernita Burks ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$3,862.00 per month commencing with the September 2021 payment, and continuing for the remaining duration of the plan.

Further, adequate protection of Village Capital & Investments, LLC's interest in the Collateral pending either the consensual modification of the Secured Claim or termination of the automatic stay and surrender of the Collateral.

Additionally, during the loan modification application process Village Capital & Investments, LLC shall be paid \$2,813.19 a month as an adequate protection payment, commencing September 2021 and continuing, for its secured claim, pending determination on the loan modification. Also, the monthly adequate protection payment shall be applied first to the post-petition interest accruing on this claim and then principal, or as specified in an agreed to loan modification.

Lastly, upon completion of a loan modification agreement the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a motion for approval of the loan modification within fourteen days of the agreement being signed by Debtor and Village Capital & Investments, LLC.



Amended Plan, Dckt. 78. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 12, 2021. Dckt. 83. Trustee opposes confirmation of the Plan on the basis that:

- A. The Trustee does not recommend confirmation of the Amended Plan unless the Court determines the plan payments are sufficient to give adequate protection to the secured creditor Village Capita Investments, LLC.

## **CREDITOR’S OPPOSITION**

Village Capital & Investment, LLC (“Creditor”) holding a secured claim filed an Opposition on October 19, 2021. Dckt. 86. Creditor opposes confirmation of the Plan on the basis that:

- A. The new Plan proposes to make no Payments to Secured Creditor pursuant to the loan until the loan modification is resolved.

## **DEBTOR’S RESPONSE**

The Debtors, Curtis Terence Burks and Carmen Vernita Burks, filed a Response to the Trustee’s Opposition on October 27, 2021, Dckt. 90. The response states that at the time the Motion was filed, Debtors were waiting for the approval of their loan modification with Village Capital & Investment, LLC and its servicer, Dovenmuehle (Creditor).

On or about October 7, 2021, Debtor received a trial modification agreement (Agreement) from Creditor. The Debtors have signed and returned the Agreement to Creditor. Exhibit A; Dckt. 91.

The Agreement requires Debtors to tender three monthly payments to Creditor in the amount of \$3,109.85, commencing on November 1, 2021, and concluding on January 1, 2022. Further, Debtors’ trial mortgage payments must be paid by cashier’s check, money order, or certified check. Lastly, the Agreement provides that if the Debtors successfully complete the trial Agreement, then the Debtors will be placed into a permanent modification, subject to approval by this Court.

Debtors filed the subject Motion and proposed Amended plan in part, to commence adequate protection payments (“APP”) to Creditor. Pursuant to Debtors’ proposed First Amended Plan, Debtors have tendered two plan payments in the amount of \$3,862.00 that include two APP for Creditor. The Plan payments were tendered on September 17, 2021, and October 19, 2021, and the funds are currently being held by the Chapter 13 Trustee.

The Debtors respectively request the hearing on the Motion be continued for 90 days so that the Debtors can complete their trial modification or alternatively, if their Motion is approved, the court would bifurcate Debtor’s on-going mortgage payments so that the Debtors’ can send their three trial payments directly to Creditor from November 1, 2021, through January 1, 2022.

There is no motion filed for the court to approve Debtor entering into a trial loan modification or for Debtor to make payments on post-petition credit that has not been approved nor for Debtor to make payments to Creditor outside of a Chapter 13 Plan.

## **DISCUSSION**

### **Failure to Provide for a Secured Claim**

The Creditor asserts their claim was listed in Class 4 but has been treated in prior versions in Section 7 Non-Standard Provisions of the Plan seeking to delay payments based on a series of forbearance agreements. The Plan now provides a complicated set of factual alternatives dealing with a loan modification that has been sent to Debtors on October 8, 2021, but has not been finalized yet. The Plan still proposes to make no payments to Creditors pursuant to the loan until the loan modification is resolved. The Creditor asserts the confusion can be cleared by the Debtors signing the agreement or surrendering the Property and allowing relief from stay.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to the Chapter 13 Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to deny confirmation.

### **Proper Treatment of Creditor's Claim**

At this juncture, there are several possible ways to address the situation. First, the court could deny the Motion. Debtor still has to file a motion to approve the trial loan modification and authorize the payments, then Debtor obtain approval of the final modification. Debtor will need to file a second amended plan.

Alternatively, Debtor could modify the Plan to provide for adequate protection payments to Creditor in the amount of the trial loan modification, and provide for the adequate protection payments to be made for five months directly by Debtor. Debtor, with Trustee's concurrence file an ex parte motion for the court to authorize the trial loan modification.

The plan terms could also include provisions for Creditor's claim being classified under Class 4 upon approval of the final loan modification, with that modification being requested by joint ex parte motion with the Trustee.

At the hearing, **XXXXXXX**

~~\_\_\_\_\_ The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~\_\_\_\_\_ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~\_\_\_\_\_ The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Curtis Terence Burks and Carmen Vernita Burks ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~\_\_\_\_\_ **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 21, 2021, as amended to provide **XXXXXXX** is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is denied.**

The debtor, Richard Astran and Lisa Yvette-Zapien Astran ("Debtor") seeks confirmation of the Modified Plan to adjust the monthly plan payments in consideration of their updated income and expenses because Richard has a new job and is earning more money. Declaration, Dckt. 35. The Modified Plan provides payments of \$1,275.00 for 6 months, \$1,630.00 for 15 months, \$1,980.00 for the remaining 39 months, and a 100 percent dividend to unsecured claims totaling \$40,343.00. Modified Plan, Dckt. 36. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 18, 2021. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. The Debtors are delinquent \$2,324.70 under the terms of the proposed plan because \$32,100.00 has become due through month 21, September 2021. The Debtors have paid a total of \$29,775.30

- B. The Trustee would not object to correcting plan payments to be \$29,775.30 total paid in through month 21 with remaining payments to be \$1,980.00 x 39 months effective October 25, 2021.

## DISCUSSION

### Delinquency

The Chapter 13 Trustee asserts that Debtor would be \$2,324.70 delinquent under the terms of the proposed plan payments. \$32,100.00 has become due through month twenty-one (21), September 2021, and the Debtors have only paid a total of \$29,775.30. However, under the confirmed plan, the Debtors remain current. The plan is now in month twenty-two (22). The proposed plan has retroactively changes the plan payments of the confirmed plan for months seven (7) through fifteen (15) from \$1,475.00 per month to \$1,630.00 per month. The Trustee calculates the plan should complete timely paying general unsecured creditors 100% if the plan payment is \$1,980.00 effective October 25, 2021 for the remaining 39 months of the plan. Making the Debtor retroactively delinquent indicates the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Modified Plan does not with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Richard Astran and Lisa Yvette Zapien-Astran (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied, and Debtor’s Modified Chapter 13 Plan filed on September 21, 2021, is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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**The case having previously been dismissed, the Motion to Amend is dismissed as moot.**

The debtor, Njoroge James Ngichu ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for including the correct amount of arrears due to Secured Creditor, U.S. Bank. Amended Plan, Dckt. 49. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on October 19, 2021. Dckt. 53. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is not proposing to cure the arrearage.
- B. The Plan was not filed as a separate document.

The case having previously been dismissed, Order (Dckt. 57), the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Amend Chapter 13 Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 27, 2021. By the court’s calculation, 36 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. The plan in the non-standard provisions calls for Debtor to pay “Dept Ed., Fedloan Serv.” directly and through the Class 7 provisions of the plan.
- B. The Debtor’s Schedule J states in part her monthly payments are in forbearance due to Covid. Although she expects a zero-payment due to a substantial reduction to her income, her repayment plan on her student loans is income based, there could be a payment due in the future.
- C. The Plan calls for no less than 0% to general unsecured claims, estimated at \$149,500.00, over the 60 month plan. Trustee claims the Plan may be causing an unfair discrimination to the unsecured creditors

because there could be a repayment to the student loans while nothing being paid to other general unsecured creditors.

## **Debtor's Response**

The Debtor, Christina M. Gutierrez, filed a response to the Trustee's Objection to Confirmation of Plan on October 14, 2021, Dckt. 20. The Debtor states the non-standard provisions are not discriminatory because all parties will receive the same amount.

The Debtor indicates that her current student loan payments are \$0.00 because she has been enrolled in a "public service debt cancellation program" with the US Department of Education for about five years. She works as a social worker for Butte County and her monthly student loan payments under this program were set at zero on or about September 28, 2021. The terms of the program provide that if she completes ten years of required payments, her student loan debt will be forgiven entirely.

Accordingly, her student loans should be forgiven in about five years if she is permitted to remain in the program while in her Chapter 13 case. If the Debtor is allowed to keep her student loan payment at \$0.00, all other general unsecured creditors will also receive \$0.00.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Plan Terms**

The Plan requires monthly payments of \$208.00 for sixty months. Plan, ¶¶ 2.01, 2.03; Dckt. 7. That totals \$12,480. Of that, \$1,248 will be paid for Chapter 13 Trustee fees, and \$3,865 paid to Debtor's counsel. That leaves \$7,367 in monies for claim disbursements.

For the Class 2 claims, Debtor will make payments of \$125 a month for 60 months, totaling \$7,500 in disbursements, leaving \$1,133 of remaining Plan monies for disbursements to other creditors.

The only other claims provided for in the plan are general unsecured claims, stated in the Plan to be \$149,500. This necessarily includes the student loans based upon the court's review of the Claims Register for this case.

### **Unfair Discrimination Against Unsecured Claims**

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 0.00% to unsecured claims; however, Debtor proposes to pay the unsecured Student Loan debt directly to the Creditor.

The Plan proposes to pay a 0.00% dividend to unsecured claims, which total \$149,500.00, but does not provide the same or less for the student loans. As drafted, the additionally provisions state that Debtor will and shall make payments on the student loans. While Debtor tells the other creditors not to worry because there is a deferment on payments now, the Plan does not provide for the student loans to be paid \$0.00 during the term of the Plan.



The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained, and Christina M. Gutierrez (“Debtor”) Chapter 13 Plan filed on August 17, 2021, is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 16, 2021. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Proof of Claim Number 5-1 of Richard J. Traunstein is sustained, and the claim is allowed in the amount of \$194,492.61, and disallowed in amounts in excess thereof to correct computational error stated in Proof of Claim 5-1.**

Christine Bonilla, Chapter 13 Debtor, ("Debtor-Objector") requests that the court disallow the claim of Richard J. Traunstein ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$248,533.02. Debtor-Objector asserts that the Proof of Claim includes incorrect mathematics, asserts charges for late fees in an amount higher than contracted, and fails to credit payments made before the filing of this case. Dckt. 48.

### **Trustee's Response**

Trustee filed a response to Debtor's Objection on October 25, 2021. Dckt. 56. Trustee notes that Creditor did not file a claim under Debtor's prior case, 20-21977, which was filed April 7, 2020, and

dismissed July 14, 2020. Further, Trustee states that this claim is late as the non-governmental bar date was October 14, 2020, and this Claim was filed April 28, 2021.

Trustee states that Creditor is not specifically named under Debtor's plan, however, the debt in the amount of \$181,474.64 is provided for under creditor name First Mortgage. Dckt. 3. Finally, Trustee has disbursed a total of \$20,206.93 (\$8,708.54 (principal) and \$11,498.39 (interest)), to Creditor.

### **Debtor's Supplement**

Debtor filed a Supplement to Objection to the Claim of Richard J. Traunstein, on October 26, 2021. Dckt. 58. The Debtor disputes the following facts Creditor claims:

1. The Payoff as of August 6, 2020:	Creditor: \$206,515.20 Debtor: \$163,661.29
2. Interest:	Creditor: \$7,176.89 Debtor: \$5,792.80
3. Late Fees (May 2019 - August 2020): 16 Months at \$70.00 each	Creditor: \$1,096.11 Debtor: \$1,120.00
4. Foreclosure Fees and Costs:	Creditor: \$5,884.94 Debtor: \$5,884.94
5. Arrears:	Creditor: \$42,017.82 Debtor: \$19,661.29
6. Total Due as of October 27, 2021:	Creditor: \$248,533.02 Debtor: \$194,492.61

Debtor states that the payoff balance Creditor identifies seems to include the amount of arrears, which duplicates the amount in the total due. Finally, Debtor requests the Claim to be disallowed in the present amount of \$248,533.02, and should be corrected to reflect a total of \$194,492.61.

### **Creditor's Response**

Creditor filed a response to Debtor's Objection on October 27, 2021. Dckt. 64. Creditor states the following:

1. Creditor consents to the Court's resolution of disputed facts pursuant to Federal Rule of Civil Procedure § 43(c), made applicable by Federal Rules of Bankruptcy Procedure § 9017.
2. Creditor is the payee under the mortgage owed by Debtor which is identified in Class one of the confirmed Chapter 13 Plan.
3. The Claim amount of \$248,533.02 was miscalculated by Creditor
4. Creditor consents to the amount submitted in Debtor's Supplement, which identifies the

starting pay off to be \$163,661.29 and therefore a claim amount of \$194,492.61.

5. Creditor will amend his claim accordingly.

## DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

### Multiple Incorrect Statements

Debtor-Objector asserts that Claim filed by Creditor has multiple incorrect statements.

First, the Mortgage Proof of Claim Attachment identifies the total debt calculation as \$226,479.89 and the total arrearage as of the date the petition was filed as \$22,838.49. The sum of these two amounts is \$249,318.38. By the court's calculation, this amount is \$785.36 greater than the amount Creditor claimed of \$248,533.02.

Second, the Reinstatement Statement attached at the end of the Claim identifies late fees to be \$121.79, however, the Installment Note states late fees are to be charged in the amount of \$70.00. Dckt. 50, Exhibit B. A late fee charge of \$70.00 a month would decrease the claim amount by \$1,242.96. The court also notes that the Claim identifies a pre-petition arrearage amount to be \$42,017.82, which is different than the reinstatement amount of \$42,017.72.

### Lack of Necessary Documents

Debtor-Objector also asserts that the Claim lacks the necessary documentary evidence to support some of the asserted numbers on the Reinstatement Statement.

First, the Claim does not include proof that any insurance advances were paid and to whom, but asserts an amount of \$1,496.00.

Second, the Claim does not include evidence to support foreclosure fees and costs in the amount of \$5,884.94.

Third, the Claim does not include the installment note or deed of trust. Debtor-Objector's

counsel did receive these documents via email from Creditor's counsel.

Finally, the Claim does not include a correct Loan Amortization Schedule, contract, and does not properly credit payments made by the Debtor-Objector. Debtor-Objector does not provide the court with the proper amount that they have already paid. Without proper evidence to support the asserted claim amount, the court cannot determine whether Creditor's Proof of Claim is accurate. The court notes the lack of reasonable effort by Creditor to ensure the Claim identifies the correct amount.

### **Sustaining Objection**

While the Trustee states that Proof of Claim 5-1 for the obligation secured by Debtor's real estate is "late," as stated in the Notice of Bankruptcy, section 8 Deadlines, and Federal Rule of Bankruptcy Procedure 3002(a) provides that for a claim secured by a lien, the lien is not void merely because a proof of claim is not timely filed.

Debtor seeks to have Creditor's claim corrected to not include additional amounts for which documentation is not provided. Objection, Dckt. 48. The Objection does not state what Debtor computes the correct amount to be. However, in Supplemental Pleadings Debtor completes the analysis and computes the correct amount of Creditor's claim to be \$194,492.61. Dckt. 58.

Creditor, in the proud tradition of rational and economically prudent bankruptcy litigation, confirms that \$194,492.61 is the correct amount of Creditor's secured claim. Dckt. 64. Further, that Creditor will amend Proof of Claim 5-1 to correct this error.

Debtor having filed this Objection, the court can make that correction and provide the parties the cost and expense of amending the proof of claim.

The Objection is sustained and the correct amount of Creditor's claim, Proof of Claim 5-1, is \$194,492.61.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Richard J. Traunstein ("Creditor"), filed in this case by Christine Bonilla, Chapter 13 Debtor, ("Debtor-Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 5-1 of Creditor is sustained, and the claim is disallowed for amounts in excess of \$194,492.61, to correct for computational errors in said proof of claim filed by Creditor.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure

8. [21-23045](#)-E-13      **CURTIS/PEGGY COWGILL**      **OBJECTION TO CONFIRMATION OF**  
[DPC-1](#)      **Mikalah Liviakis**      **PLAN BY DAVID P. CUSICK**  
8 thru 9           **9-29-21 [19]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2021. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

<b>The Objection to Confirmation of Plan is sustained.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A.      The plan is not be feasible.

## **DISCUSSION**

Trustee's objections are well-taken.

## **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that the feasibility of the Plan depends on Debtors' being able to obtain a forbearance and selling their real property within the forbearance time period. Debtors testified at the Meeting of Creditors that they were in the process of trying to obtain a forbearance to allow enough time to sell the real property. Trustee states Debtors are currently delinquent on their mortgage. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. The court notes that the Order approving Debtor's Motion to Employ Lisa McKee as Realtor to sell Debtor's real property was issued on October 4, 2021. Dckt. 26.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 9, 2021. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
---

BCMB1 Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The plan is not feasible.

## DISCUSSION

Creditor's objections are well-taken.

## Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor contends the plan is not feasible because it fails to properly provide for Creditor's secured claim. Debtors' Schedule I and J identify a net monthly income of \$1,988.43, but also identifies



\$0.00 going to mortgage payments. As such, Debtors' new monthly income is likely overstated. Furthermore, Debtors identify Creditor's claim to be \$82,500.00, however, the correct claim amount is \$84,187.04. Debtors' proposed plan includes monthly plan payments of \$1,990.00. Debtors do not have sufficient income to fund the plan as their monthly net income is less than the monthly plan payment amount. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtors filed an Response to Creditor's Objection on October 11, 2021. Dckt. 27. Debtors contend that the Plan understates Creditor's secured claim by \$1,687.04. However, Debtors state that their current Chapter 13 Plan is sufficient to pay Creditor with approximately \$28.00 a month to go towards the understated amount.

Furthermore, Debtors state they are working to employ a realtor to sell their real property and if the property is sold, Creditor will be paid in full. The court notes that the Order approving Debtors' Motion to Employ Lisa McKee as Realtor to sell Debtors' real property was issued on October 4, 2021. Dckt. 26. While the Debtors state the Plan should be confirmed, the court does not have an accurate picture of Debtors' financial reality and thus, cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by BCMB1 Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on September 21, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Claimed Exemptions is sustained, and XXXX.**

David Cusick ("the Chapter 13 Trustee") objects to Robert Stuart MacBride's ("Debtor") claimed exemptions under California law because Debtor over exempts the vehicle and wild card exemptions. Debtor's Schedule C reflects a claimed exemption of \$575,000.00 in a 1984 Land Cruiser pursuant to California Code of Civil Procedure § 703.140(b)(2) and (5), which is in excess of the statutory limits.

The vehicle exemption is not to exceed \$5,850.00. Cal. C.C.P. § 703.(b)(2). The willdcard exemption is limited to \$29,275, which incorporates any portion of the unused homestead exemption California Code of Civil Procedure § 703.140(b)(1) into § 703.140(b)(5).

The court has previously addressed with Debtor some shortcomings in his pro se efforts to prosecute this case, and continued the hearing on the Trustee's Motion to Dismiss to afford Debtor the opportunity to assess his situation and seek out the assistance of counsel. Civil Minutes, Dckt. 46.

Looking at Debtor's Schedules, it appears that the exemptions chosen by Debtor may well not be in his best interest. On Schedule A/B, Debtor lists owning real property having a value of

\$575,000. Dckt. 11 at 1. Proof of Claim 1-1 has been filed asserting a claim of (\$332,168) secured by the real property. Thus, if Debtor's valuation is accurate, Debtor has more than \$200,000 of equity to protect in this property, all of which could be exemption under the non-bankruptcy exemption provisions of California Code of Civil Procedure § 740.710 *et seq.*

However, the Debtor, in *pro se*, has not claimed a homestead exemption in this real property which Debtor states is his residence (Petition, question 4; Dckt. 1).

As stated on Schedule C, Debtor does not state an exemption in the vehicles.

Unfortunately, Debtor's other claimed exemptions are improper under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b)(2)-(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed for all property listed. The following items are claimed as 100% of fair market value: 1982 Land Cruiser, Household Goods, Collectibles, Sports/Photo Equipment, Clothing, Jewelry and Stock Shares.

This raises further issues concerning Debtor's ability to prosecute this case, protect his rights and interests in real and personal property, and obtain the relief available under the Bankruptcy Code without the assistance of counsel.

At the hearing **XXXXXXX**

~~\_\_\_\_\_ The Chapter 13 Trustee's Objection is sustained, and these claimed exemptions are disallowed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~\_\_\_\_\_ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~\_\_\_\_\_ The Objection to Claimed Exemptions filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~\_\_\_\_\_ **IT IS ORDERED** that Objection is sustained, and:~~

~~\_\_\_\_\_ A. Debtor's claimed exemption in the 1984 Land Cruiser is disallowed in excess of the amount Debtor's interest in the property;~~

~~\_\_\_\_\_ B. Debtor's claimed exemption for Electronics is disallowed in the amount in excess of California Code of Civil Procedure § 703.140(b)(5);~~

~~\_\_\_\_\_ C. Debtor's claimed exemptions in the 1982 Land Cruiser, Household Goods, Collectibles, Sports/Photo Equipment,~~

~~Clothing, Jewelry and Stock Shares under California Code of Civil Procedure § 703.140(b)(2)-(5) are disallowed in their entirety.~~

11. [20-24469-E-13](#)      LEEANNA ATTERBERRY      CONTINUED MOTION TO MODIFY  
[DBL-1](#)      Bruce Dwigginns      PLAN  
7-27-21 [\[28\]](#)

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 21, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Confirm the Modified Plan is denied.**

The debtor, Leeanna May Atterberry ("Debtor") seeks confirmation of the Modified Plan to account for missed payments after becoming ill with Covid-19 and being off work from March through June. Declaration, Dckt. 30. The Modified Plan provides payments of \$1,245.00 for months 42 through 60, and a 100 percent dividend to unsecured claims totaling \$300.00. Modified Plan, Dckt. 32. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 11, 2021. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that:

A. The Plan's Additional Provisions contain inaccurate statements

regarding: Debtor's mortgage and Class 2 creditor.

B. Debtor's Schedule I and J are filed as exhibits only.

## **DISCUSSION**

### **Additional Provisions**

Debtor cannot comply with the Plan. According to Trustee, the additional provisions indicate the mortgage will be paid off in month 41 and proposes that for months 42 – 60 the mortgage arrears should receive payments in the amount of \$15,253.00 at a monthly dividend of \$802.79 with 0% interest. However, Trustee calculates the mortgage will not be paid off by month 42 (March 2024) where a total of \$24,787.37 (\$5,441.13 (amount paid to date) + \$18,741.67 (months 11-41) + \$604.57 (post arrears for July 2021)) should have disbursed in mortgage payments by then on a claim of \$46,279.37. Thus, Debtor's plan will not be sufficient to pay the mortgage, Trustee's fees, monthly dividends, and attorney's fees.

### **Schedules Filed as Exhibits**

Debtor's Schedule I and J filed July 27, 2021 are filed as an Exhibit only and are otherwise not identified on the Court's docket as an amended or supplemental schedule of expenses, potentially making it difficult for parties to find the Debtor's most recent budget on file with the Court.

### **August 31, 2021 Hearing**

At the hearing, Debtor's counsel addressed the issues and some of the challenges the Debtor is facing. The Parties agreed to a continuance for Debtor to evaluate the situation, address the issues if possible, or determine whether this case should be dismissed and the Debtor file a new case with a relatively "clean slate."

### **November 2, 2021 Hearing**

At the November 2, 2021 hearing, **XXXXXXX**

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Leeanna May Atterberry ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Modified Plan is denied,

and the proposed Chapter 13 Plan is not confirmed.

12. [20-23783-E-13](#) **BRAD HAMILTON /CHERISE** **MOTION TO MODIFY PLAN**  
[JGD-6](#) **WILLIAMS** **9-28-21 [126]**  
**John Downing**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtors, Brad Alan Hamilton and Cherise Cathleen Williams ("Debtor") seek confirmation of the Chapter 13 Plan. The Debtor wishes to change their exemptions from 11 U.S.C. § 704 to 11 U.S.C. § 703 to claim an exemption of \$26,000.00 in the net proceeds held by Trustee, which they claim is \$44,929.56. Plan, Dckt. 126, 128. Furthermore, they wish to use the remaining \$18,929.56 to be distributed to pay off: (1) One Main Financial (\$2,242.17); (2) Administrative Expenses such as Trustee and Attorney's fees; and (3) Priority Tax Claim Balances (\$16,667.43 Federal and \$1,638.00 State). *Id.* Finally, Debtors will then pay \$275.00 per month for 38 months to pay off the remaining priority tax claims, with that amount reflecting best efforts with Debtor's increases in housing expenses. *See* Declarations, Dckt. 129-130. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on October 19, 2021. Dckt. 132. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor’s plan fails Chapter 7 Liquidation Analysis, and their change of exemption is not reflected in their Amended Schedule C.
- B. Debtor has not clarified the amount of the proceeds on sale of real property will be paid into the plan.
- C. Debtor is delinquent.
- D. Debtor has included additional attorney’s fees without the necessary motion to include such an increase.
- E. Debtor has failed to file a Supplemental Schedule I and J to explain changes current income and expenses.

## **REPLY BRIEF**

On October 27, 2021, Debtors filed a reply brief to Trustee’s Opposition. Dckt. 135. Debtors state:

- 1. They have filed their Amended Schedules, including Amended Schedule C, providing a \$26,000.00 exemption for the net proceed from the sale.
- 2. From the remaining funds, payments are to be made as follows:
  - a. \$13,000.00 to each Debtor;
  - b. \$2,226.78 to pay off secured claim of One Main Financial;
  - c. \$2,770.00 to attorney’s fees.
- 3. Debtors request the Order Confirming the Modified Chapter 13 Plan, NonStandard Provision for Section 2.01 be corrected to show:
  - a. \$900.00 per month for 1 month;
  - b. \$1,050.00 per month for 10 months;
  - c. \$275.00 per month for 49 months, to commence on August of 2021;
  - d. Debtors paid \$200.00 on August 23, 2021, \$20.00 on September 23, 2021, and \$180.00 on October 4, 2021;
  - e. Debtors are delinquent \$425.00 through October 2021.

4. Counsel is filing a Supplemental Fee Application for \$2,770.00.

5. Supplemental Schedules I and J have been filed.

## **DISCUSSION**

### **Debtor Fails Liquidation Analysis**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that the non-exempt equity exceeds \$46,781.63 and the Debtor proposes to pay the unsecured debtors no less than a zero percent (0%) dividend. Debtor's motions indicate that the net proceeds from the sale of 6013 Semaphore Drive, Portola, California ("Property") is \$44,929.56. However, the amount in actual escrow is \$46,781.63.

Furthermore, Debtor's motion states that Debtor changed their exemptions from 11 U.S.C. § 704 to 11 U.S.C. § 703 to claim an exemption of \$26,000.00 in the net proceeds held by Trustee, but Debtor's Amended Schedule C (Dckt. 122) does not include this exemption. Therefore the Debtor cannot claim a portion of the sale proceeds as exempt, and the Debtor fails the Chapter 7 Liquidation Analysis. The Chapter 7 Liquidation Analysis requires that each holder of an impaired interest either accept the plan or would not receive less than the value such holder would receive or retain should the Debtor's liquidate under Chapter 7. Here, with the influx of non-exempt equity, said unsecured creditors should receive a non-0% dividend.

### **Sale of Non-Exempt Asset**

Debtor's modified plan proposes set plan payments alongside funds from the sale of 6013 Semaphore Drive, Portola, California ("Property") in an unspecified amount used to pay priority taxes after paying administrative expenses, secured creditors, and refunding \$25,000 in non-exempt proceeds to the Debtor. The plan initially estimated that \$25,000.00 would be refunded to the Debtor and \$10,000.00 would be paid to the plan from the sale of the Property. However, Debtor has reported a sale of a non-exempt assets in the amount of \$46,781.63, and after \$25,000.00 refund, there would remain instead \$21,781.63 in sale proceeds. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, whether the proceeds to be paid to the plan would be the \$10,000.00 or \$21,781.63.

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$3,400.00 delinquent in plan payments, which represents multiple months of plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

### **Increase in Attorney's Fees**

The Chapter 13 Trustee argues that the modified plan reflects a change in Attorney's fees where no motion for additional attorney's fees have been filed. Under Section 3.05 of the modified plan, the fees are indicated as \$1,000.00 paid prior to filing with \$7,500.00 to be paid through the plan (\$8,500.00 total). The Attorney's Fees pursuant to Order filed on April 7, 2021, Dckt. 104, are \$1,000.00



paid prior to plan filing with \$4,730.00 to be paid through the plan (\$5,730.00 total). There is no motion to explain this increase in fees. *See* 11 U.S.C. § 328.

### **Failure to File Supplemental Schedules I and J**

The Chapter 13 Trustee argues that Debtor has failed to file a supplemental Schedules I & J to reflect current income and expenses such as the increased housing costs. Line 8a of Schedule I requires Debtor to “[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.”

### **REVIEW OF EXEMPTIONS**

The Debtor states that the exemptions being claimed by Debtor are being changed from 11 U.S.C. § 703 to 11 U.S.C. § 704. The Trustee argues that no such supplemental Schedule C has been filed.

On October 27, 2021, almost a month after the Motion to Confirm and Modified Plan had been filed, Debtor filed an Amended Schedule C. Dckt. 137 at 9-11. While referencing in the Motion the exemption provision as being provisions of the Bankruptcy Code, in Schedules correctly identify the exemptions as being claimed under the California Code of Civil Procedure § 703.140 (California having opted out of the federal exemption scheme).

Under the existing confirmed Chapter 13 Plan in this case, Debtor is required to sell the Semaphore Road property as part of the Plan. 1<sup>st</sup> Amended Plan, Order Confirming; Dckts. 50, 82. Debtor claimed an exemption in \$42,509.00 of the proceeds from the sale of the Semaphore Road property. See Amended Schedule C, Dckt. 53, which was in effect at the time the 1<sup>st</sup> Amended Plan was confirmed.

### **SUBSEQUENTLY FILED DOCUMENTS**

Only after the Trustee filed the Opposition did Debtor file several key motions. These motions are summarized as follows.

On October 28, 2021, Debtor filed a Motion for the court to retroactively authorize the employment of a real estate broker, “Realtor,” to represent Debtor in selling the Semaphore property and pay the broker \$3,875. Dckt. 138. The grounds stated in the Motion to Employ and Allow Compensation include:

- A. On May 20, 2021, well after this case was filed and 1<sup>st</sup> Amended Plan Confirmed, Debtor engaged the services of the Realtor.
- B. On June 25, 2021, the Realtor learned of the bankruptcy case and the requirement that the court approve any sale and fees paid to broker.
- C. On June 25, 2021, Debtor entered into a Purchase Agreement to sell the property.
- D. Debtor believes that there has been an adequate explanation provided as to why the Debtor did not seek authorization to employ the Realtor until October 28, 2021,

even though the Debtor and Realtor clearly knew of the bankruptcy and the need for the bankruptcy court to authorize the sale and approve fees as early as June 25, 2021.

Motion, Dckt. 138. The Realtor provides his declaration, stating that on June 29, 2021, he was made aware of the bankruptcy case and that “my employment may be required under bankruptcy law.” Dckt. 140.

The court’s order authorizing the sale of the property was filed on June 27, 2021. Dckt. 116. In the Order, it expressly states that the Realtor may seek retroactive authorization to be employed and for the allowance of fees.

This “prompt” request for retroactive authorization is not being made until one hundred and twenty-one (121) days after the court issued the order authorizing the sale and clearly stating that such retroactive authorization was required. However, the fee amounts are relatively modest, being \$ \$3,875 (2.5% of the purchase price).

On October 28, 2021, counsel for Debtor filed a Supplemental Fee Application, seeking additional fees in the amount of \$2,770.00 (counsel reducing his fees to make the plan fund). Dckt. 143.

The Modified Plan states that any fees provided therein for counsel are subject to prior approval of the court.

At the hearing, **XXXXXXX**

~~————— The Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~————— Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~————— The Motion to Confirm the Chapter 13 Plan filed by the debtor, Brad Alan Hamilton and Cherise Cathleen Williams (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion to Confirm the Plan is **XXXXXXX**.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<b>The Motion to Incur Debt is denied.</b>
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Marc A. Wilkie ("Debtor") seeks permission to purchase a 2018 Hyundai Santa Fe, with a total purchase price of \$48,396.16, a down payment of \$10,000.00, and monthly payments of \$533.28 to Lithia Hyundai of Reno over 6 years with a 12.59% fixed interest rate.

Trustee's Reply

Chapter 13 Trustee, David Cusick, filed a response on October 26, 2021. Dckt. 28. Trustee addresses concerns regarding the interest rate and the reasonableness of the purchase. In particular, Trustee points out that Debtor has failed to file a current Schedule I and J to outline how Debtor has savings to afford a down payment on the vehicle. The Trustee suggests Debtor file an Amended Schedule A/B and a Schedule C to exempt their savings at the time of filing under Cal. Civil Proc. 703.140(b)(5).

## DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re*

*Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

## **Reasonableness**

Debtor does not address the reasonableness of incurring debt to purchase a used (3 years old) vehicle during this Chapter 13 cases. When this case was filed, Debtor owned a 2018 Jeep Wrangler and a 2017 Jeep Renegade Tomohawk. When the Renegade was surrendered, Debtor removed a portion of their debt, and elected to keep the Jeep Wrangler.

Looking at Schedule J, Debtor has no Dependents. Dckt. 1 at 31. Debtor is not married. *Id.* at 34.

Debtor states that he has been terminated from his employment by Landart in Reno, Nevada, and he has re-instituted his self-employment working in the Napa California area, commuting there from his Kings Beach (Lake Tahoe), California residence.

On Schedule A/B Debtor states that he does not own any real estate and on Schedule G states that he has no leases. Dckt. 1. However, on Schedule J Debtor states he pays (\$1,450.00) a month in (presumably, since no real property is listed on Schedule A/B) rent to live in Kings Beach (Lake Tahoe), California.

Under the confirmed Chapter 13 Plan Debtor is making a \$540.00 a month payment (a \$28,702 claim with 4.87% interest) as a Class 2 Claim for the Wrangler. Debtor seeks to keep the Wrangler and keep paying \$540.00 a month for a vehicle that he does not want to continue to drive.

Under the proposed purchase Debtor seeks to purchase a second vehicle, a 2018 Hyundai Santa Fe “or similar vehicle” for an amount not to exceed \$48,396.16 and an interest rate not to exceed 12.59%.

Paying interest on a \$50,000 vehicle at 12.59% when the Debtor already owns a vehicle and is paying for it through the Plan equates to many, many gallons of gas to be purchased for his existing vehicle, even to the extent that Debtor believes the \$50,000 vehicle would be more fuel-efficient.

The Motion states that Debtor has “some savings” and will put \$10,000 down on the vehicle. When this case was filed on November 23, 2020, a mere eleven months ago, the asset information provided by Debtor doesn’t show \$10,000 in “some savings.” Additionally, the income and expense information provided by Debtor on Schedules I and J from which his net projected disposable income was projected clearly shows that he does not have \$1,000 a month to put into savings.

Further, Debtor does not explain the luxury of one person owning two cars, for which he will be paying more than \$1,000 a month in just car payments (without considering maintenance, insurance, and registration) – all while he is needing the extraordinary relief available under Chapter 13 and

“struggling” to perform his Chapter 13 Plan to meet his commitment to pay a dividend of not less than 0.00% to creditors with \$275,000+ in general unsecured claims.

### **Best Interest of Debtor**

Here, the transaction is not in the best interest of Debtor. The loan calls for a substantial interest charge—12.59%. Moreover, it is unclear to the court how in good faith Debtor could propose to purchase a car when paying holders of unsecured claims nothing. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a “reward” for filing bankruptcy is to purchase a car and attempt to borrow money at a 12.59% interest rate.

In the Motion, it is asserted that Debtor desires to purchase this \$50,000 vehicle to get better gas mileage. The Kelly Blue Book online service (a recognized trade journal and value guide satisfying the hearsay limitation of the Federal Rules of Evidence) reports that for a 2018 Hyundai Santa Fe the gas mileage is 18 mpg City, 25 mpg Highway, and 21 mpg Combined.<sup>Fn.1</sup>

For the 2018 Jeep Wrangler, Kelly Blue Book reports its gas mileage to be 17 mpg City, 21 mpg Highway, and 18 mpg Combined.<sup>Fn.1</sup> Thus, for highway driving, purchasing the \$50,000 vehicle and incurring debt at 12.59% interest would allow Debtor to save 3 miles per gallon.

Debtor testifies under penalty of perjury that his projected annual driving mileage will be 28,000 miles. Declaration, ¶ 12; Dckt. 26. With a combined mileage of 18 mpg, that would require 1,556 gallons of gas. However, if the new vehicle is purchased, that would require 1,333 gallons.

The new vehicle would reduce gas consumption 223 gallons of gas a year, a 14% reduction. However, to get that Debtor will be paying 12.59% on a \$38,000 obligation (assuming that Debtor has “saved” \$10,000 from a source that does not have to be included as part of the past plan payments. In the first year, the 12.59% on \$38,000 amortized over 72 months would be \$4,529 (computed using the Microsoft Excel Loan Calculator). 1,333 gallons of gas at \$4.35 a gallon (presuming that gas prices do not decline from their current historic high) would be \$5,798, yielding Debtor a “savings” of \$1,263 when compared to just the 12.59% interest.

However, to get that “savings” Debtor has to make monthly car loan payments of principal and interest of \$755 (\$38,000 amortized over 72 months at 12.59% interest), which total \$9,060 a year to purchase a vehicle of the same year as he currently has to “save” \$1,263 a year. It appears to the court that the purchase actually causes Debtor to lose (\$7,797) a year (\$9,060 of new car payment, less the \$1,263 in gas “savings” to drive the new vehicle and leave parked, for which Debtor continues to make the plan payments, his existing 2018 vehicle.

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FN. 1.

<https://www.kbb.com/hyundai/santa-fe/2018/>

<https://www.kbb.com/jeep/wrangler/2018/>  
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### **Confirmed Plan Terms**

The confirmed Chapter 13 Plan requires monthly plan payments of \$1,247.00 for 60 months. Plan, ¶¶ 2.01, 2.03; Dckt. 4. Of this, \$2,500.00 is to be paid to Debtor's counsel (averages \$42 a month) and \$124.70 for Chapter 13 Trustee fees.

The Class 2 payment for the claim secured by the Wrangler is \$540 a month. *Id.*, ¶ 3.08.

For Class 5 priority claims, Debtor's plan lists (\$30,318.00). *Id.*, ¶ 3.12. Proof of Claim 7-1 filed by the Internal Revenue Service asserts a priority unsecured claim of (\$22,497.57). In Proof of Claim 8-1 the California Franchise Tax Board asserts an unsecured priority claim of (\$5,125.79). The priority claims asserted total (\$27,623.36), slightly less than anticipated by Debtor. The (\$27,623.36) in priority unsecured claims, amortized over sixty months, averages a monthly disbursement of \$460.40.

Debtor's counsel's fee disbursement averaging \$42 + Chapter 13 Trustee Fee of \$124.70 + Class 2 secured claim \$540 + Class 5 priority claim \$460.40 = \$1,167.10 of the monthly disbursements, leaving an "extra" \$80 a month of the plan payment. That is not sufficient to fund the purchase of the \$50,000 vehicle.

Thus, it appears that if the court were to approve the incurring of this debt, the Debtor's Plan would be doomed to failure, the dismissal of his case likely, and his prior time in this case and money spent to be for want.

The court cannot identify a good faith basis provided for by Debtor on the evidence presented and grounds stated, to incur debt at 12.59% and purchase a \$50,000 vehicle.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Marc A. Wilkie ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is Denied.

# FINAL RULINGS

14. [19-24867-E-13](#) [TLA-2](#) **JWYANZA BROUSSARD AND  
ELECTA GREERBROUSSARD  
Thomas Amberg** **MOTION FOR COMPENSATION FOR  
THOMAS L. AMBERG, DEBTORS  
ATTORNEY(S)  
10-5-21 [98]**

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 5, 2021. By the court’s calculation, 28 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

Under the specific facts and circumstances of this Motion, including the modest amount of fees, the court shortens time to that provided by Movant – for this Contested Matter only.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Thomas L. Amberg, Jr. the Attorney (“Applicant”) for Jwyanza Broussard and Electa Greer Broussard Chapter 13 Debtors (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 28, 2021, through October 5, 2021. Applicant requests fees in the amount of \$1,050.00.

## **Trustee's Nonopposition**

On October 13, 2021, Chapter 13 Trustee, Neil Enmark, filed a nonopposition. Dckt. 104. Trustee does not oppose the Motion for Compensation and states the fees are reasonable and Debtors are current in plan payments.

## **APPLICABLE LAW**

### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251



B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's for the Estate include the substantial and unanticipated filings of: (1) a Motion to Modify the Debtor's plan; (2) an Opposition to the Trustee's Motion to Dismiss the Case; and (3) this Motion for Compensation. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **"No-Look" Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the First Modified Chapter 13 Plan expressly provides that Applicant is allowed \$6,000.00 in attorneys' fees, all of which went to Debtor's previous attorney, Muoi Chea. These fees exceed the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 85. Applicant prepared the order confirming the Plan.

## **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Opposition to Motion to Dismiss: Applicant spent 0.2 hours in this category. Applicant reviewed the motion to dismiss, and Applicant communicated to clients with his findings. Applicant then drafted the response/opposition to the motion to dismiss.

Motion to Modify: Applicant spent 3.3 hours in this category. Applicant communicated with his clients regarding their budget, how they wanted their plan to be structured, and other necessary details to draft a motion to modify a Chapter 13 plan (0.4 hours). Applicant subsequently drafted the

motion alongside the modified plan, necessary exhibits, and necessary declarations (2.5 hours). Finally, Applicant filed and served the motion to modify the plan (0.1 hours), and prepared a response to the Trustee's opposition to the confirmation of the plan (0.2 hours).

Motion to Compensate: Applicant spent an unspecified number hours in this category; however, Applicant does not intend to charge fees for the drafting of this motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Thomas L. Amberg, Jr., Attorney	3.5	\$300.00	\$1,050.00
<b>Total Fees for Period of Application</b>			\$0.00

## **FEES ALLOWED**

### **Fees**

The unique facts surrounding the case, including drafting a first modified Chapter 13 plan that was granted, drafting a successful opposition to the Trustee's dismissal, and drafting a motion for compensation, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,050.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,050.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg, Jr. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amberg, Jr. , Professional Employed by Jwyanza Broussard and Electa Greer Broussard (“Debtors”)

Fees in the amount of \$1,050.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed, First Modified Plan.

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 22, 2021. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings

**The Motion for Allowance of Professional Fees is granted.**

Thomas L. Amberg, Jr. the Attorney (“Applicant”) for Sharon Patterson Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 14, 2021, through September 21, 2021. Applicant requests fees in the amount of \$1,050.00.

## **APPLICABLE LAW**

### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all

relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not—
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?

- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s for the Estate include the substantial and unanticipated filings of: (1) a Motion to Modify the Debtor’s plan; (2) an Opposition to the Trustee’s Motion to Dismiss the Case; and (3) this Motion for Compensation. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **“No-Look” Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

- (a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC



3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the First Modified Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 73. All of fees went to Debtor’s previous attorney Muoi Chea. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial

estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*), 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Opposition to Motion to Dismiss: Applicant spent 0.3 hours in this category. Applicant reviewed the motion to dismiss and communicated to clients with his findings. Applicant then drafted the response/opposition to the motion to dismiss.

Motion to Modify: Applicant spent 3.2 hours in this category. Applicant communicated with his clients regarding their budget, discussed how they wanted their plan to be structured, and discussed other necessary details to draft a motion to modify a Chapter 13 plan (0.5 hours). Applicant spent additional time communicating with the client on this matter (0.1 hours). Applicant subsequently drafted the motion alongside the modified plan, necessary exhibits, and necessary declarations (2.5 hours). Finally, Applicant filed and served the motion to modify the plan (0.1 hours).

Motion to Compensate: Applicant spent an unspecified number hours in this category, however, Applicant does not intend to charge fees for the drafting of this motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Thomas L. Amberg, Jr., Attorney	3.5	\$300.00	\$1,050.00

<b>Total Fees for Period of Application</b>	<b>\$0.00</b>
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### **Fees Allowed**

The unique facts surrounding the case, including drafting a first modified Chapter 13 plan that was granted, drafting a successful opposition to the Trustee's dismissal, and drafting a motion for compensation, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,050.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,050.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg, Jr. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amberg, Jr. , Professional Employed by Sharon Patterson ("Debtor")

Fees in the amount of \$1,050.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick ("the Chapter 13 Trustee") is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed, First Modified Plan.

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2021. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings

<p><b>The Motion to Approve Loan Modification is granted.</b></p>
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The Motion to Approve Loan Modification filed by Octavio Saenz and Diana Saenz (“Debtors”) seeks court approval for Debtors to incur post-petition credit. PennyMac Loan Services, LLC (“Creditor”), whose claim the Plan provided for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,068.28 per month to \$1,901.39 per month. The modification will bring the debtors current on their payments and will provide a fixed interest rate of 3.00%.

The Motion is supported by the Declaration of Octavio Saenz and Diana Saenz. Dckt. 119. The Declaration affirms Debtors’ desire to obtain the post-petition financing and provides evidence of Debtors’ ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtors’ ability to fund that Plan.

### **Trustee’s Nonopposition**

The Chapter 13 Trustee filed a nonopposition on October 13, 2021, requesting Debtors file a

supplemental budget. Dckt. 122.

### **Debtor's Reply**

Debtors filed a Reply including said requested supplemental budget. Dckt. 125.

There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Loan Modification filed by Octavio Saenz and Diana Saenz ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Octavio Saenz and Diana Saenz to amend the terms of the loan with PennyMac Loan Services, LLC ("Creditor"), which is secured by the real property commonly known as 6761 Alamar Way, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 120).

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2021. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Thomas L. Amberg, Jr. the Attorney (“Applicant”) for Cesar Peig and Dolly Ramos Peig Chapter 13 Debtors (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period July 15, 2021, through September 17, 2021. Applicant requests fees in the amount of \$1,050.00.

#### **Trustee’s Nonopposition**

On October 13, 2021, Chapter 13 Trustee, Neil Enmark, filed a nonopposition. Trustee does not oppose the motion. Trustee claims the fees are reasonable and Debtors are current in plan payments.

#### **APPLICABLE LAW**

## Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s for the Estate include the substantial and unanticipated filings of: (1) a Motion to Modify the Debtor’s plan; (2) an Opposition to the Trustee’s Motion to Dismiss the Case; and (3) this Motion for Compensation. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **“No-Look” Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a



plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the First Modified Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 73. All of fees went to Debtor’s previous attorney Muoi Chea. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-

1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. See *In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Opposition to Motion to Dismiss: Applicant spent 0.5 hours in this category. Applicant reviewed the motion to dismiss, and Applicant communicated to clients with his findings. Applicant then drafted the response/opposition to the motion to dismiss.

Motion to Modify: Applicant spent 3.2 hours in this category. Applicant communicated with his clients regarding their budget, how they wanted their plan to be structured, and other necessary details to draft a motion to modify a Chapter 13 plan (0.5 hours). Applicant subsequently drafted the motion alongside the modified plan, necessary exhibits, and necessary declarations (2.5 hours). Finally, Applicant filed and served the motion to modify the plan (0.1 hours), and prepared a response to the Trustee’s opposition to the confirmation of the plan (0.1 hours).

Motion to Compensate: Applicant spent an unspecified number hours in this category; however, Applicant does not intend to charge fees for the drafting of this motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which

compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Thomas L. Amberg, Jr., Attorney	3.7	\$300.00	\$1,110.00
<b>Total Fees for Period of Application</b>			\$0.00

### **Fees Allowed**

The unique facts surrounding the case, including drafting a first modified Chapter 13 plan that was granted, drafting a successful opposition to the Trustee's dismissal, and drafting a motion for compensation, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,100.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,110.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Thomas L. Amberg, Jr. ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Thomas L. Amberg, Jr. is allowed the following fees and expenses as a professional of the Estate:

Thomas L. Amberg, Jr. , Professional Employed by Cesar Peig and Dolly Ramos Peig ("Debtors")

Fees in the amount of \$1,110.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed, First Modified Plan.

18. [21-23014](#)-E-13      **KYLE FARRIS AND GRACIELA JARAMILLO-FARRIS**      **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**  
[DPC-1](#)      **Mikalah Liviakis**      **9-29-21 [25]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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<p><b>The Objection to Confirmation of Plan is dismissed without prejudice.</b></p>
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David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on September 29, 2021, Dckt. 25; no prejudice to the responding party appearing by the dismissal of the Objection; the Chapter 13 Trustee having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; the Ex Parte Motion is granted, the Chapter 13 Trustee’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of Plan filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 29, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

**WITHDRAWN BY DEBTOR**

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

-----

<p><b>The Motion to Modify Chapter 13 Plan is dismissed without prejudice.</b></p>
--

Kelly Anne McKellar (“Debtor”) having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 21, 2021, Dckt. 86; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Cusick (“the Chapter 13 Trustee”); the Ex Parte Motion is granted, Debtor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Chapter 13 Plan filed by Kelly Anne McKellar (“Debtor”) having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 103, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Modify Chapter 13 Plan is dismissed without prejudice.

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens the time to the 34 days given.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Peter G. Macaluso, the Attorney ("Applicant") for Hortencia M. Nunez, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2020, through February 4, 2021. Applicant requests fees in the amount of \$1,380.00.

## APPLICABLE LAW

### Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the

estate at the time they were rendered?

- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s for the Estate include preparing and filing a motion to modify the confirmed plan, including preparing a new plan and responding to opposition. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **“No-Look” Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

- (a) Compensation. Compensation paid to attorneys for the representation of



chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 22. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves

“multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## FEES REQUESTED

### Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Modify: Applicant spent 4.9 hours in this category. Applicant prepared and filed the modified plan, responded to opposition and prepared the Order confirming the Modified Plan.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Peter G. Macaluso	4.5	\$300.00	\$1,350.00
Legal Assistant	0.4	\$75.00	\$30.00
<b>Total Fees for Period of Application</b>			<b>\$1,380.00</b>

## FEES ALLOWED

### Fees

The unique facts surrounding the case, including the need to Modify the Confirmed Plan due

to the impact of COVID-19 on the Debtor, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$1,380.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick (“the Chapter 13 Trustee”) from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$1,380.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Hortencia M. Nunez  
 (“Debtor”)

Fees in the amount of \$1,380.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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The case having previously been dismissed, the Motion to Confirm Plan is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2021. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Modified Plan is granted.</b>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Roxanne Louise-Barr Yonn and Charles Blair Yonn ("Debtors"), have filed evidence in support of confirmation.

#### **Trustee's Response**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a response indicating non-opposition on October 18, 2021. Dckt. 29. Trustee notes that Section 3.05 of the proposed Plan states attorney's fees in the amount of \$3,000.00 are to be paid out, however, the fees were previously ordered to be paid in the amount of \$2,975.00. Dckt. 16.

#### **Debtor's Reply**

Debtors filed a reply on October 25, 2021, stating they agree with Trustee's response that the Order on Modification include the following: "The balance of attorney fees to be paid through the Plan are \$2,975.00." Dckt. 32.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Roxanne Louise-Barr Yonn and Charles Blair Yonn (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on September 14, 2021, as amended to state the balance of Debtor’s attorney’s fees to be paid are \$2,975.00, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the forgoing amendment, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

23 thru 24

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion to Confirm the Amended Plan is granted.</b></p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtors, Michael James Brooks and Stephanie Marie Brooks ("Debtors") have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on October 19, 2021. Dckt. 43. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtors, Michael James Brooks and Stephanie Marie Brooks ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on September 28, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. [21-23061-E-13](#) **MICHAEL/STEPHANIE BROOKS** **OBJECTION TO CONFIRMATION**  
[DPC-1](#) **Bruce Dwiggins** **OF PLAN BY DAVID P. CUSICK**  
**9-29-21 [35]**

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 29, 2021. By the court's calculation, 34 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1). Sufficient notice was not provided.

The Objection To Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection is overruled as moot.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Prior to the filing of this Objection, Debtor filed an Amended Plan and corresponding Motion to Confirm on September 28, 2021. Dckts. 30, 33. Trustee filed a non-opposition to Debtor's Motion to Confirm and the Amended Plan has been confirmed. Further, Trustee's Objection depended on whether the Motions to Value Collateral were granted. Both Motions to Value Collateral filed by the debtors were granted at the October 12, 2021 hearing and the court issued the Orders granting on October 18, 2021. Dckts. 41, 42. Trustee's Objection to Confirmation is overruled as moot.



The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled as moot, Debtor having filed an Amended Plan.

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2021. By the court’s calculation, 34 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens time to the 34 days provided.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings

**The Motion for Allowance of Professional Fees is granted.**

Peter G. Macaluso, the Attorney (“Applicant”) for Brian Okamoto, the Chapter 13 Debtor (“Client”), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period August 7, 2017, through April 20, 2021. Applicant requests fees in the amount of \$3,000.00.

## APPLICABLE LAW

### Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the

estate at the time they were rendered?

- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s for the Estate include the substantial and unanticipated filings of: (1) a Motion to Modify the Debtor’s plan alongside opposition to Trustee’s Motion to Dismiss; (2) a Motion to Modify the Plan; and (3) a Motion for Loan Modification. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **“No-Look” Fees**

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.”

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor’s attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed \$4,000.00 in attorneys’ fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 203. Applicant prepared the order confirming the Plan.

### **Lodestar Analysis**

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v.*

*Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). “This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer’s services.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional’s fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion “in view of the [court’s] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.” *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Modify Plan and Motion to Dismiss: Applicant spent 4.90 hours in this category. Applicant reviewed the Motion to Dismiss, reviewed the case both independently and with the client, and drafted and filed a Motion to Modify Plan. Applicant also reviewed the Withdrawal of Motion to Dismiss Case, and received a subsequent Opposition to Motion to Modify. Applicant also prepared and filed a Response to Opposition to Motion to Modify, and Applicant appeared for the hearing on said motion. Finally, Applicant sent the Order for the Motion to Modify upon approval.

Motion to Modify: Applicant spent 2.15 hours in this category. Applicant prepared and filed the Motion to Modify the plan, reviewed the Opposition to said Motion, prepared a Response to said Opposition, and prepared the Order for the Motion to Modify.

Motion to Approve Loan Modification: Applicant spent 3.75 hours in this category. Applicant had a meeting with client to discuss the Motion, prepared and filed the Motion, reviewed the response to the Motion, and prepared a Reply to Response to the Motion to Approve Loan Modification. Applicant also appeared for hearings to approve the (above) Motion to Modify and Approve Loan Modification, which were both granted.

Although total hours equate to 10.8 hours, Applicant is only requesting to be charged for 10 hours.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Peter G. Macaluso, Attorney	10	\$300.00	\$3,000.00
<b>Total Fees for Period of Application</b>			\$0.00

### **Fees Allowed**

The unique facts surrounding the case, including preparing a Motion to Modify the Debtor's plan alongside opposition to Trustee's Motion to Dismiss, a Motion to Modify the Plan and a Motion for Loan Modification, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$3,000.00 is approved pursuant to 11 U.S.C. § 330 and authorized to be paid by David Cusick ("the Chapter 13 Trustee") from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,000.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by Brian Okamoto ("Debtor")

Fees in the amount of \$3,000.00

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

**IT IS FURTHER ORDERED** that David Cusick (“the Chapter 13 Trustee”) is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

26. [21-22299-E-13](#)      **ADRENIA DESPANIE**      **MOTION TO CONFIRM PLAN**  
[CJY-1](#)      **Christian Younger**      **9-18-21 [34]**

**Final Ruling:** No appearance at the November 2, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 18, 2021. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion to Confirm the Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Adrenia Despanie (“Debtor”), has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on October 19, 2021. Dckt. 40. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:



Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Adrenia Despanie ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's First Amended Chapter 13 Plan filed on September 18, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.